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In re Application of	:	
ZABEAU, et al.	:	DECISION ON
Application No.: 09/011,307	:	
PCT No.: PCT/EP96/03480	:	PETITION UNDER
Int. Filing Date: 06 August 1996	:	
Priority Date: 07 August 1995	:	37 CFR 1.181
Attorney Docket No.: 31640-134354	:	
For: RESISTANCE AGAINST WILT	:	
INDUCING FUNGI	:	

This is a decision on applicants' "Petition to Withdraw Holding of Abandonment" filed on 16 July 2001. The petition is being treated as a petition under 37 CFR 1.181.

BACKGROUND

On 07 May 1999, applicant was mailed a decision informing applicant that further national stage processing, including the mailing of a Notification of Acceptance of Application Under 35 U.S.C. 371 and 37 CFR 1.494 or 1.495 (Form PCT/DO/EO/903) assigning 35 U.S.C. 102(e) and 371 dates of 01 May 1998 would be held in abeyance pending receipt of a supplemental oath or declaration identifying the correct international filing date of 06 August 1996. Applicant was afforded one month to file the supplemental oath or declaration and informed that extensions of time were available.

On 11 September 2000, applicant filed a "Transmittal of Supplemental Declaration and Status Inquiry."

On 06 October 2000, applicant was mailed a reply informing applicant that a timely reply to the decision of 07 May 1999 had not been filed and that the application was abandoned as to the United States of America on 08 June 1999.

On 14 May 2001, applicant was mailed a "Notification of Abandonment" (Form PCT/DO/EO/909) reiterating that applicant had failed to file a timely reply to the decision of 07 May 1999 and that the application was abandoned as to the United States of America on 08 June 1999.

On 16 July 2001, applicant filed the present petition seeking to vacate the "notification of Abandonment" (Form PCT/DO/EO/909) based on the premise that the decision of 07 May 1999 was never received.

DISCUSSION

A review of the written record indicates that the Decision dated 07 May 1999 was addressed to the correspondence address on file as of 07 May 1999 and indicates no irregularity in the mailing of the Decision. In the absence of any irregularities there is a strong presumption that the Decision was properly mailed to the address of record and this presumption may be overcome by a showing that the Decision was not in fact received. The showing required to establish the failure to receive an Office action must consist of a statement from the practitioner stating that the Office action was not received by practitioner and attesting to the fact that a search of the file jacket and docket records indicates that the Office action was not received. A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.

Applicant's counsel has attested that a search of the file jacket and docket records indicates that the Notice was not received. Specifically, the petition states, "That is, there is no record of receiving the May 7, 1999 Decision for this application. If such a paper had been received in **Venable** (boldness added) in May 1999, then it would have been opened...." As indicated in the reply mailed to applicant on 06 October 2000, the decision mailed 07 May 1999 was mailed to the correspondence address on file; Spencer and Frank, Suite 300 East, 1100 New York Avenue, N.W. Washington, DC 2005-3955. A review of the application papers reveals that a change of correspondence address has not been filed for the present application. Section 601.3 Change of Correspondence Address, Manual of Patent Examining Procedure states, "[w]here an attorney or agent of record changes his or her correspondence address . . . a separate notification must be filed in each application for which a person is intended to receive communications from the Office." Applicants have failed to show that a proper change of correspondence address was filed prior to 07 May 1999 or show that the decision mailed 07 May 1999 was not received at the address of record detailed above.

Thus, applicants have not provided the proper showing necessary to withdraw the holding of abandonment and the petition may not be properly granted.

CONCLUSION

The Petition to Withdraw Holding of Abandonment under 37 CFR 1.181 has been considered, however, for the reasons indicated above, the petition stands **DISMISSED** without prejudice and the application remains **ABANDONED**.

Applicants may wish to consider filing a petition to the Commissioner under 37 CFR 1.137(a) or (b) requesting that the application be revived. Any petition filed under 37 CFR 1.137(a) and/or a petition under 37 CFR 1.137(b) requesting that the application be revived must meet the criteria indicated in the recent revision of 37 CFR 1.137. This recommendation to file a petition under 37 CFR 1.137(a) or (b) should not be construed as an indication as to whether or not any such petition(s) will be favorably considered.

If reconsideration of the merits of this petition is desired, a proper response must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled, "Renewed Petition Under 37 CFR 1.181." No additional fee is required.

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of the letter marked to the attention of the PCT Legal Office.



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